PUBLIC NOTICE

Federal Communications Commission
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SECTION 272 SUNSETS FOR VERIZON IN NEW YORK STATE BY OPERATION OF LAW ON DECEMBER 23, 2002 PURSUANT TO SECTION 272(f)(1)

WC Docket No. 02-112

The provisions of section 272 (other than section 272(e)) of the Communications Act of 1934, as amended (the Act), applicable to BOC provision of in-region, interLATA telecommunications services sunset for Verizon's operations in New York by operation of law as provided in section 272(f)(1), effective December 23, 2002.

Section 272 of the Act requires BOCs to provide in-region, interLATA telecommunications services through separate corporate affiliates, subject to certain safeguards. 47 U.S.C. § 272(a)(2). Section 272(f)(1) provides that the provisions in section 272 (other than section 272(e)) expire three years after a BOC or BOC affiliate is authorized under section 271 to provide in-region, interLATA services, unless the Commission extends such 3-year period by rule or order. 47 U.S.C. § 272(f)(1).

The Commission granted its first section 271 authorization for BOC provision of in-region, interLATA services to Verizon for New York State in an order released on December 22, 1999.[1] Pursuant to section 272(f)(1), section 272 (other than section 272(e)) sunsets by operation of law for Verizon in New York State, effective December 23, 2002.[2]

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1 *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999).

2 *See Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Memorandum Opinion and Order, FCC 02-336 (rel. Dec. 23, 2002) (finding that section 272(f)(1) is best interpreted as providing for a state-by-state sunset).

For further information, please contact Claudia Pabo or Pamela Arluk, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1580.

Action by the Commission on December 20, 2002: Commissioners Copps and Adelstein dissenting and issuing a joint statement; Commissioner Martin concurring and issuing a statement.

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JOINT STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN AND
COMMISSIONER MICHAEL J. COPPS,
DISSENTING

Re: Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements

We dissent from today's decision insofar as it allows the separate affiliate requirements in Section 272 to sunset for Verizon in New York without the necessary analysis by the Commission. As the Commission stated so clearly just last week in its decision on the *SBC California 271 Order,* "our principal guarantee under the Act against improper accounting practices and cross-subsidizations is compliance with the structural and accounting safeguards of section 272." In this era of corporate governance problems and accounting depredations, we find it incredible that the Commission would eliminate a tool to provide safeguards and accounting transparency without even addressing the arguments raised in the record.

In Section 272, Congress required Bell companies to provide long-distance and manufacturing services through a separate affiliate. In implementing these requirements, the Commission concluded that Congress adopted these safeguards because it recognized that Bell companies may still exercise market power at the time they enter long-distance markets. Congress provided that these requirements would continue for three years, but could be extended by the Commission by rule or order.

Congress clearly gave the Commission the charge to determine whether these structural, accounting, and auditing safeguards remain necessary to prevent anticompetitive discrimination in the market. Yet the Commission has neglected to consider whether there is a need for these or alternative safeguards. The Commission has also not addressed other steps necessary to prevent discrimination, such as performance measures, notwithstanding that that issue has been pending for more than a year. Further, the Commission has failed even to address arguments raised in the record.

In particular, the Commission has not considered the views of our State colleagues. The New York Commission found that elimination of these requirements would be premature. The Texas Commission – the next State in the queue for elimination of these requirements – concluded that the sunset of the Section 272 safeguards would be "imprudent and untimely," and "would fail to meet Congress' objectives in implementing Section 272." Since the State commissions are engaged in the Section 271 process from the beginning, and are our partners in the effort to carry out the directives of Congress, it is particularly important to weigh their considerations, and particularly that of the affected State, as we move to this next phase.

Further, we have neglected to analyze the market in New York. Our data on whether competition is taking hold is sketchy and non-integrated. The data we have and the analysis derived from it are, for us, insufficient for making the determination mandated by Congress.

By neglecting to comprehensively evaluate the basis for our action in this proceeding, we now reach the anomalous result that rural independent carriers are subject to more stringent separation requirements than the Bell companies. We would have preferred to address all of these issues together in a coherent and reasoned manner.

Without doing so, we have not fulfilled our statutorily mandated responsibilities.

CONCURRING STATEMENT OF
COMMISSIONER KEVIN J . MARTIN

Re: *Public Notice, Section 272 Sunsets For Verizon in New York State By Operation of Law on December 23, 2002 Pursuant To Section 272(f)(1)*

In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket 02-112

Today, the Commission—in a public notice—declares that the statutory requirement that BOCs provide in-region, interLATA telecommunications services through a separate corporate affiliate will sunset for Verizon's operations in New York by operation of law.[3]

I am concerned that the Commission's decision to summarily allow the section 272 requirements to sunset was made through a public notice rather than a Commission order responding to questions raised on the record. The decision to allow the separate affiliate requirements to sunset without any analysis or discussion is odd given that the Commission previously released a notice asking whether we should extend the section 272 safeguards.

In response to our request for comment, many parties, including state commissions, contend that it is premature to lift the separate affiliate safeguards provided by section 272. For example, some contend that the sufficiency of the biennial audit process has yet to be established.

I would have preferred that we affirmatively set forth, in a separate Commission order, our analysis and justification for granting the relief we announce in today's public notice rather than remain silent.

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[3] 47 USC Section 272.